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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,738	01/27/2004	Roland Hengerer	426882007800	2842
20872	7590	12/19/2005	EXAMINER	
MORRISON & FOERSTER LLP 425 MARKET STREET SAN FRANCISCO, CA 94105-2482			DESTA, ELIAS	
			ART UNIT	PAPER NUMBER
			2857	

DATE MAILED: 12/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Detailed Action

Drawing

1. The Examiner accepts the amendment to the drawing filed on September 20, 2005.

Specification

2. The specification is objected to because of the following minor informalities:
 - Page 5, paragraph 31: constants α_1 and α_2 represent decay constant not 'time constant'. Appropriate correction is required.

Explanation of Rejection

Claim rejection – 35 U.S.C. 101 and 112

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-12 are rejected under 35 U.S.C. 101 because the claimed invention is not supported by either a substantial asserted utility or a well established utility, because the decay rate, which is the level of decomposition rate of the material under measurement, does not have a definite correlation with scent ratio because the outcome of the two variables is not formulated by a well-behaved function, and applicant has not shown otherwise. The base or reference scent value is arbitrarily chosen and then compared to another scent value in order to establish a ratio; however, the ratio defined in the system as a whole may not produce real world value that

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provides substantial or well-established utility. The values sensed by the “electronic sensor” don’t seem to have a specific value, like physiologically or chemically interpretable values (such as frequency, PH or concentration values). Claim 9 is indefinite because applicant’s statement the characteristics of the first and second volatile components is not known or defined

Claims 1-12 are also rejected under 35 U.S.C. 112, first paragraph. Specifically, since the claimed invention is not supported by either a substantial asserted utility or a well established utility for the reasons set forth above, one skilled in the art clearly would not know how to use the claimed invention.

Response to Argument

Claim rejection 35 U.S.C. § 101 & 112

5. In reference to claims 1-12: the Examiner maintains that the claims are rejected based on the assertion that the claimed invention is not supported by either substantial asserted utility or a well established utility because the decay rate, which is the level of decomposition rate of the material under measurement, does not have a definite correlation with scent ratio because the outcome of the two variables is not formulated by a well-behaved function, and applicant has not shown otherwise. The base or reference scent value is arbitrarily chosen and then compared to another scent value in order to establish a ratio; however, the ratio defined in the system as a whole may not produce real world value that provides substantial or well-established utility. The values sensed by the “electronic sensor” don’t seem to have a specific value, like physiologically or chemically interpretable values (such as frequency, PH or concentration values).

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Applicant has stated that the invention does not rely on knowing the decay rate and yet the decay rate is at least directly noted in claims 1 and 5.

Applicant has stated that since claims 1-12 are presented as process or machine claims, they are deemed to be useful and are eligible for a patent protection under 35 U.S.C. § 101. However, 2107 in MPEP also includes a utility requirement that the asserted claimed invention should fulfill in order to be eligible for a patent protection under 35 U.S.C. § 101. For instance, as noted above, the decay rate (reference to claims 1 and 5), which is the level of decomposition rate of the material under measurement, does not have a definite correlation with scent ratio because the outcome of the two variables is not formulated by a well-behaved function, and applicant has not shown otherwise. Applicant has amended claim 9 to read on “the method of marking an object with a volatile identification code”. However, claim 9 is indefinite because applicant’s statement the characteristics of the first and second volatile components is not known or defined.

The preamble of the amended claim 10 is the method of sealing an object, and yet the steps stated in the claim are intended to determine a reference scent ratio. Hence, the scent ratio does not by any means constitute steps to provide a well-established utility. The values sensed by the “electronic sensor” don’t seem to have specific value, like physiologically or chemically interpretable values (such as, PH or concentration values) (claim 12).

Claims 1-12 are also rejected under 35 U.S.C. 112, first paragraph. Specifically, since the claimed invention is not supported by either a substantial asserted utility or well established utility for the reasons set forth above, one skilled in the art clearly would not know how to use the claimed invention.

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Applicant's arguments filed September 20, 2005 have been fully considered but they are not persuasive.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elias Desta whose telephone number is (571)-272-2214. The examiner can normally be reached on M-Thu (8:30-7:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc S. Hoff can be reached on (571)-272-2216. The fax phone numbers for the organization where this application or proceeding is assigned are (571)-273-8300 for regular communications and After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571)-272-1750.


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Elias Desta
Examiner
Art Unit 2857

-ed

November 21, 2005


MARC S. HOFF
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800